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## DIVORCE: FROM A FRENCH POINT OF VIEW.

BY M. ALFRED NAQUET, OF THE CHAMBER OF DEPUTIES.

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IN FRANCE, as elsewhere, many persons imagine that the law which in 1884 reëstablished divorce in that country has given a new color to the divorce question, and they are now asking themselves whether the experiment has produced good or bad results. Even if it were possible in an examination of this kind to employ the scalpel of the anatomist, the conclusion which might be reached would be rather hastily drawn, as it requires more than a few short years for a law, if it has any real influence on society, to show its effect. I might go further and add that social phenomena are far too complicated to permit us to attribute to a particular cause certain determined results. If we are to arrive at a correct conclusion we must also find out what influence was exerted at the same time by all the other active causes, a proceeding totally impossible in matters of this kind.

Thus, when the partisans or the opponents of capital punishment base their arguments on the increase or decrease of murder, as the case may be, in the countries where this mode of punishment has been abolished or reëstablished, their reasoning does not rest on solid ground. If, for instance, crime diminished the moment guillotining was stopped, who could tell but that this happy result might be due simply to an improvement in the habits and customs of the people? The diminution might, perhaps, have been still greater if the scaffold had been left standing. On the other hand, if crime increased, the cause might be sought in that feverish state produced by the excessive competition of modern civilization; and who could say whether the same improvement would not have been observed if capital punishment had not been abolished?

The same thing is true of divorce. If, twenty or thirty years after the promulgation of the law establishing it, we should observe that the number of unhappy families had increased, that there was more immorality and crime than before, it would be quite absurd to attribute to this institution all this misery; and we would be just as unphilosophical in declaring it to be the cause of an amelioration, if such had really occurred.

Have the opponents of divorce ever looked at the question in this light? I cannot say whether they have. I do notice, however, that they lay great stress on the number of families which are broken up by divorce. If this number were to diminish they might be inclined to admit that the law had done some good. But when, on the contrary, they perceive an increase in the total of the sundered households, they hold up their hands in holy horror and declare that society is in danger. Their conclusions, however, are very hasty. A law which suddenly establishes divorce finds itself necessarily brought face to face with a mass of cases which have been accumulating for years. The first act is a sort of general liquidation, which produces exaggerated optical effects. But when this clearing of the docket is accomplished, and there come up for decision only the divorce cases belonging to each successive year, then a decrease follows the increase, and the public mind is calmed.

This is exactly what happened in Switzerland. When the law passed in 1874 came into force two years later, the divorce business suddenly assumed enormous proportions, whereas to-day it appears to be entering upon a period of decrease. However, Switzerland still remains one of the countries where there are the most divorces. But the settled fact is to be noted that the increase observed was followed by a period of decrease.

Will the same thing happen in France? I cannot say positively, but the logic of the situation would lead one to answer the question in the affirmative. But I never like to get ahead of facts, and the facts in the case have not yet spoken. Printed statistics come down only to the year 1888. Now, as the divorce law passed in 1884 was not really taken advantage of till two years later, when it was perfected by the law which modified its procedure, it will be seen that we have scarcely two years of statistics before us, and these the very years when, on account of the liquidation to which I have just referred, the figures would be

abnormally high. And they were in fact very high. Thus in 1883, the year before divorce was established, there were granted in France 3,010 separations (*a mensâ et thoro*). In 1888 the number of separations and divorces together had risen to 7,166.

But whether these figures increase or remain stationary, there will be no reason for jumping to any conclusion, unless it be to this one, that, as there is much divorcing in France, the re-establishment of divorce was a crying necessity.

In Sweden, where there are almost no disunited households, perhaps society can get on without this institution. But where, on the contrary, there is a considerable number—I refer to separation from bed and board—this very number shows that the reform is needed, like a safety valve in a steam engine. In order to draw a different conclusion, it would first be necessary to establish the fact that this increase is caused by the legislation which permits married people to separate; but it is this very demonstration that nobody has made or can make, for such an allegation would be in contradiction with the truth.

M. Jacques Bertillon, the able head of the Paris Bureau of Statistics, has established in a decisive manner, seldom witnessed in matters of this kind, that the number of families which are disunited is quite independent of the legislation of a country. For instance, there are nations where the laws are the same, but where there is an extraordinary variation in the number of separations and divorces. Thus, in Switzerland, certain cantons—Geneva, Bâle and Zurich, for example—show an enormous number of divorces, while other cantons, such as Uri, do not offer a single case, though the law is the same throughout the Confederation. The same thing is seen in Scandinavia. Thus Denmark abounds in separated family circles, while in Sweden and Norway there are almost none; and yet the laws governing the matter are about the same, while, furthermore, these people are as near alike as possible in race, customs and religion.

What legislation can accomplish—I said this when I first took up this divorce question, and I shall not cease repeating it, because it is the philosophical truth—is the bringing to light of existing social facts or the checking of the manifestation of these same facts, though they exist in the same degree in both cases. Let me explain more clearly what I mean. Imagine a country where neither separation nor divorce exists. Does anybody sup-

pose for an instant that consequently there would be no broken family circles. It is evident that nobody cherishes this delightful chimera, since nobody proposes the suppression of separation from bed and board ; but if the state of things which I have imagined really prevailed, there would, of course, be badly assorted unions, where the husband and wife would be found living apart, exactly as is the case to-day. But as society can discover this only by means of its civil registers and decisions of the courts, and as these means of information would be lacking in this hypothetical case, these separations would not be noted, and the statistics would contain a cipher under the heading "Separations."

Let us suppose now that this same country, where exist no legal means of dissolving marriages, takes a step in the direction of greater liberty and establishes separation from bed and board. Of course all the married couples already living in this separated state would care little for this new law. A separation of this sort has few advantages, except in special cases, where, for example, the husband wishes to protect himself against what might result from the criminal commerce of his wife and her falsely attributing to him the paternity of a child, or the case in which a wife seeks more effectual protection from a husband's evil treatment. Except in instances of this kind most people would prefer not to admit the public to a share in their domestic troubles by having recourse to the new law, and would continue to live apart amicably. Some couples, however, would avail themselves of it, so that the statistical tables, which heretofore had contained only a cipher, would now register a positive figure, which would go on constantly increasing, for it is a well-established fact that to-day in every country, whatever may be the nature of its legislation in respect to the subject now under consideration, the number of separations is continually progressing. In France, for instance, before the reestablishment of divorce, and when, consequently, divorce could not be held responsible for the fact, the total of separations from bed and board gradually grew from 642 in 1840 to 3,010 in 1883. If short-sighted sociologists should conclude from these figures that the liberalizing of marriage legislation had produced evil results, such a conclusion would be very unphilosophical and very far from the truth. All that these statistics prove is that our legislators, in becoming less strict, had made it possible to count the cases of domestic in-

felicity which up to that time had been kept in the shade. Nobody could hold that the law was the cause of these separations.

Let us go still further and consider the situation which prevailed in France first in 1792, and again in 1884, when the law of divorce took its place beside that of legalized separation from bed and board. Up to that date a certain portion of those couples who lived in a state of amicable separation had, as we have just stated, held back from the cost and trouble of going to law. But now, finding in the divorce law a chance to begin married life over again and to create a new family, they considered that the advantages were greater than the inconveniences of a law suit, and so they were ready to go into court. Thereupon statistics would again denote an augmentation in the amount of conjugal infelicity. But would there in reality be any such increase? None whatever. These broken unions are now brought forth to the light of day. They existed yesterday and do not date from to-day. The divorce law was a sort of microscope which had enabled the statistician to see and note what was hitherto beyond his ken.

If divorce legislation becomes still more liberal, if the facilities for separation are made easier and easier, this apparent increase in the divorce column will again show itself, and this will continue until legislation embraces every case which has heretofore been relegated to the background of obscurity.

Every day I am consulted by married people in trouble. Now it is the wife who has been deserted by the husband, and now *vice versa*. The household may be broken in twain, but our present law does not recognize the cause as a sufficient ground for divorce. Again, the complainant has no proof of the ill-treatment of which she or he is the victim. But if the divorce law which was introduced in 1792 were still in force, and which declared as sufficient cause for the breaking of union the persistent demand on the part of one of the parties, these unfortunate people who consult me and who at present neither apply for divorce nor separate, would seek divorce. Then only would the official statistics mark the fact. But they exist to-day and the law which would make it possible to note them would have nothing to do with bringing them about.

It may well be asked whether, from a social point of view—and this is the only thing to be considered—mystery is preferable to publicity in a matter of this kind; whether amicable sepa-

rations which take place in spite of the law and outside of the law are less harmful than legalized ones. For my own part I am convinced that legalized separations are far less baneful, and this is why, not believing that legislation could influence in any way the number of broken unions, I determined to do what I could to secure the reestablishment of divorce in France.

I well knew that nothing is more dangerous than to attempt by means of laws to exercise coercive powers in the domain of social phenomena, where constraint can never effect anything. The Bavarians, for instance, discovered the truth of this principle when, startled by the danger to society occasioned by an excessive birth rate, and wishing to check it among the poorer classes, they made an attempt to prohibit marriage when the contracting parties had no certain means of support; but, instead of reducing the real number of births, this law simply increased, to a disquieting degree, the total of illegitimate children; so it was promptly repealed. There was an apparent diminution in the number of marriages, but it was only apparent; for clandestine unions, with all their corrupting influences, took the place of legal ones, thus proving once more that legislation cannot check cohabitation any more than it can prevent separation.

In countries where divorce does not exist, the number of unions *officially* dissolved decreases, and there is no record of the subsequent unions formed by separated parties, but it does not follow that no such unions exist. On the contrary, illicit connections are formed and adulterous family circles are created, which take the place of regular and recognized households, while illegitimate children are substituted for legitimate ones that would have been numbered as such if it had not been for this state of things. This is the only possible outcome of strict legislation and the result does not reflect honor on such legislation.

My own convictions on this subject are so well established, that if I did not fear the reaction to which popular ignorance might give birth, I should not hesitate, if in my power to do so, to remove every obstacle in the way of divorce. Such a liberal law, which would make it possible for those living apart to legalize their situation, would so increase the divorce list, that the simple-minded public would take the effect for the cause, and would blot it from the statute book. Taking into account the degree of enlightenment of civilized countries in general and of

France in particular, I should say that the divorce law passed in the latter country in 1884 is all that we could and should expect.

Another aspect of this problem is that of divorce among the laboring classes. Some of my fellow countrymen were disturbed at the thought of opening to the democratic masses the benefits of a law, which, according to them, ought to be reserved exclusively for people in easy circumstances.

A few days ago I read in the *Galignani Messenger* an article touching on this point. The writer was frightened at the number—21,000—of divorces applied for by the Paris working classes in four years. The English organ at Paris saw in these figures a veritable danger to society. Though the courts may come to the rescue of the children of divorced parents who are rich, argued the writer, they are powerless where the parties are without a fortune ; and, furthermore, as the larger part of these divorces among the working classes are followed by new unions, a mass of children are handed over to the far from tender mercies of step-mothers and step-fathers, and are thus deprived of the healthful education of the true family circle.

This objection was often thrown in my face before I succeeded in getting divorce back on our French statute book. But I found no more trouble in answering it then than now. The greater the number of applications for divorce emanating from the laboring classes, the more it proves to me that divorce answers a pressing, urgent need among the working masses of our cities.\* I use advisedly the phrase “the working masses of our

\* Applications, from 1884 to 1888 inclusive, for separation or divorce—I speak here of applications and not granted divorces—arranged according to the callings of the parties, are shown in the following table:

PROFESSIONS.	1884.	1885.	1886.	1887.	1888
Landlords, persons with incomes, or those in liberal professions.....	733	1,115	915	918	925
Merchants and trades people.....	1,168	1,427	1,319	1,457	1,371
Farmers.....	615	862	855	873	821
Working people of all kinds, except farmers.....	1,841	2,946	3,141	3,825	3,765
Servants.....	227	385	474	533	416
Profession not given, or without profession.....	855	815	894	1,553	1,119
Total.....	5,439	7,550	7,598	9,149	8,417

This table shows that the peasantry, which forms 70 per cent. of the whole population of France, figures here for scarcely 11 per cent. Thus the total applications foot up 37,453, where the farmers represent 4,023, or 10.7 per cent.



cities," for in the country districts of France it is very rare for a peasant to take advantage of the divorce law, although its stipulations are the same for all classes of citizens. This fact verifies the truth of M. Bertillon's statement that marriage and divorce are governed by causes to which legislation is foreign.

Does anybody believe that when divorce was impossible our working men and women abandoned one another less often than they do to-day? If anybody does believe this he is very simple-minded. Then, as now, good-for-nothing wives left their husbands in order to launch into debauchery; then, as now, bad husbands, in far larger numbers than bad wives, shirked their conjugal and paternal duties. Though the official statistics are silent on this point, the facts cry aloud.

When, among the upper classes, troubles of this sort arose, relief was obtained by separation from bed and board. A husband with money who did not wish to see his fortune divided among his legitimate children and bastards would obtain a separation of this kind in order to disavow more easily any irregular offspring, while a wife would have recourse to the same law in order to protect more surely her fortune from marital dilapidation, to settle more exactly her financial position, and to remove the children from the sight of their father's immorality.

But what would be the results of such a separation when practised among the working classes? There being no fortune, no benefit would accrue from a judgment requiring one of the parties to pay an allowance to the other. The decree of the court would be a dead letter. As regards disavowal of paternity, this becomes of far less importance where the matter of inheritance plays no part. Consequently, though under the old law there was quite a number of separations among laboring people, the total was relatively small; and it may be safely added, furthermore, that these separations occurred more particularly in the more moral and well-to-do portion of the working classes. However, whether these separations were granted by the courts, or whether, as was far more generally the case, they were brought about privately, the results were far different from those among the upper classes.

Let us suppose, for instance, a husband deserted by his wife, who has proved herself to be a bad spouse and a bad mother, and has left him alone with one or more children. Or let us suppose

a wife abandoned by her husband and charged with little ones to care for. How will these different parties be affected by the situation? If they belong to the upper classes where there is a fortune, the husband will have domestics to look after the children, or he will send them to the boarding school. If weary of the celibacy forced upon him by the law, he forms an illicit union, this is at least done clandestinely, and it is kept hidden from the children, whose moral state is not harmed thereby. The deserted wife, who is blessed with money, can, in her turn, devote herself to her children's education and live with them honorably.

Now, let us turn to the working classes and see how they fare in circumstances of this kind. The deserted father can have no servant to care for the house and children. He is forced to wive again, but if he cannot contract a legal union he will contract an illegal one, for matrimony is a necessity for his own domestic happiness and for keeping his children from the street. If the union be illicit the moral effect on the children may be bad, but surely less so than if there were no woman at all to watch over them. In a word, therefore, when a workingman is abandoned by his wife he sets up a new home with his mistress.

The situation of the deserted workingwoman is still worse. As matters now stand in France, a woman cannot live by her own labor. If by rare chance she succeeds in supporting herself she must have no children, and there must be no "dead season." This is a hard and unpalatable truth which cannot be removed by the fine dissertations of philosophers and moralists. Prostitution or an adulterous *liaison* is the only means by which she can keep the wolf from the door.

When certain people point with pious horror to the 21,000 applications for divorce among the working classes, filed between January 1, 1888, and December 31, 1891, they do not grasp the real meaning of these figures. What do these figures signify, then? Simply that in four years 21,000 working men and women were forced to choose between illicit unions or divorce and a legal second marriage—that is to say, 5,250 persons per year, who, actuated by a higher morality, desired, both on their own and their children's account, to regularize their conjugal situation. If divorce had not been reëstablished, or if it had been restricted to the upper classes, what would have become of these 21,000 petitioners? Is there any one who believes that these broken

unions would have been patched up and these separated families brought together again? Not even the most determined opponent of divorce dares hold such an opinion. Clandestine unions would take the place of the 21,000 regular ones, which would surely be established in a vast majority of the cases where the divorce was granted, and the formation of a new home thus made possible.

That the systematic enemies of the marriage relation, that the partisans of "free love" should rejoice at this state of things, is easily understood, though, even from the standpoint of the latter, these irregular unions cannot be looked upon as a wholly good thing in a society where legal marriage frowns upon illegal marriage. However this may be, it is to be noted that it is not the advocates of free love who protest against the 21,000 petitions for divorce emanating from the male and female toilers of France. On the contrary, it is the determined friends of the indissolubility of the marriage tie, or, at least, those who wish to limit the extent of divorce and make it an aristocratic institution—they it is who advocate the continuation of this corrupt order of things. I for one cannot understand their attitude. I cannot see how, forced to choose between 21,000 false households and 21,000 regular ones, formed after divorce, the advocates of "holy wedlock" can decide in favor of the 21,000 irregular unions.

As for myself, while admitting that the dissolving of the marriage tie is an evil, I consider and shall always consider that, to whatever social class one belongs, divorce which enables men and women to reënter upon a legal union, is, as regards parents, children and society, an infinitely less evil than the separation obtained by the courts or agreed upon privately.

ALFRED NAQUET.